

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ERNEST SMALIS, :  
Plaintiff, :  
v. : Case No. 3:03-cv-268-KRG-KAP  
DR. ADAM EDELMAN, DR. LANSKY, :  
and PRISON HEALTH SERVICE, INC., :  
Defendants :  
:

MEMORANDUM ORDER

This matter was referred to Magistrate Judge Keith A. Pesto for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and subsections 3 and 4 of Local Rule 72.1 for Magistrate Judges.

On September 12, 2007, the Magistrate Judge filed a Report and Recommendation, docket no. 68, recommending that the motion for summary judgment filed by defendants, docket no. 62, be granted, and that the motion for summary judgment filed by plaintiff, docket no. 59, be denied.

The parties were notified that pursuant to 28 U.S.C. § 636(b)(1), they had ten days to serve and file written objections to the Report and Recommendation. Plaintiff filed timely objections, docket no. 69. Plaintiff's claim of a serious medical need was accepted by the Magistrate Judge, but as the Magistrate Judge found, plaintiff has not provided any competent evidence of deliberate indifference by these defendants. Plaintiff's claim that there nevertheless is an genuine issue of fact as to defendants' deliberate indifference is meritless. I stress to plaintiff that whether he ought to receive surgery based on more

recent events with Doctor Daloni at S.C.I. Mercer is not at issue in this civil suit, which is against defendants who made treatment decisions several years ago.

Upon de novo review of the record, the Report and Recommendation, and the objections thereto, the following order is entered:

AND NOW, this 26<sup>th</sup> day of September, 2007, it is ORDERED that summary judgment is entered in favor of all defendants. The Report and Recommendation is adopted as the opinion of the Court. The Clerk shall mark this matter closed.

BY THE COURT:



KIM R. GIBSON  
UNITED STATES DISTRICT JUDGE

Notice by ECF to counsel of record and by U.S. Mail to:

Ernest Smalis FH-5830  
S.C.I. Mercer  
801 Butler Pike  
Mercer, PA 16137